IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

Crl.MC.No. 1088 of 2007()

CC.928/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI

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PETITIONER: 2ND ACCUSED

A.ALI,
ALIKKANAKATH HOUSE, POOKAYIL, TIRUR.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1088 of 2007

Dated this the 3rd day of April, 2007

ORDER

The petitioner was accused No.7 in a prosecution for offences punishable, inter alia, under Section 143 and 452 read with 149 I.P.C. The petitioner was not available for trial. Some of the co-accused faced trial. They have been found not guilty and acquitted. The petitioner has now come before this Court with a prayer that proceedings against him in the split up case may be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason ? The learned counsel for the petitioner submits that in the trial against the co-accused, the witnesses did not support the prosecution's case. One of the victims, defacto complainant was not available to be examined in such trial. Parties have willingly and voluntarily settled their disputes now. In these circumstances, a lenient view may be taken and the proceedings against the petitioner may be brought to premature termination, prays the learned counsel for the petitioner.

3. The offenceS alleged include offences which are not compoundable under Section 320 Cr.P.C. When the offences are non compoundable, the mere fact that the parties have entered into a compromise, which does not have the sanction of law is too

inadequate a reason to justify the invocation of powers under Section 482 Cr.P.C. That the co-accused have been acquitted is again no ground in law to justify invocation of the extraordinary inherent jurisdiction as explained in [**Moosa v. Sub Inspector of Police** [2006(1) KLT 552] by the Full Bench. Moreover, it is clearly conceded that in the trial against the co-accused, the defacto complainant was not available for examination in the trial .

4. The defacto complainant has not come before this Court to report any composition. Even if the defacto complainant reports composition, the offence under Sections 143 & 452 I.P.C cannot be compounded. The decision in **B.S.Joshy v. State of Haryana** [A.I.R (2003) SC 1386], it has often been repeated, has not obliterated the distinction between compoundable and non-compoundable offences. In these circumstances, the alleged composition even if true cannot be accepted and that cannot be reckoned as a sufficient reason to accept the composition under Section 482 Cr.P.C.

5. The petitioner can certainly appear before the learned Magistrate and contend that charges are not liable to be framed under Sections 452 and 143 I.P.C and that charges if at all are liable to be framed, only for compoundable offences. Thereupon the petitioner can certainly report composition in accordance with law and claim invocation of the powers under Section 320 Cr.P.C. Such

request, if any of the petitioner, must certainly be considered by the learned Magistrate in accordance with law.

6. Finally the learned counsel for the petitioner submits that the petitioner having not appeared before learned Magistrate, a warrant of arrest issued by the learned Magistrate is chasing the petitioner. The petitioner is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

7. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. The learned Magistrate must consider such application for bail on merits, in accordance with law and expeditiously. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

8. This Crl.M.C is, in these circumstances, dismissed, but with the above observations. I may hasten to observe that if the

petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

9. The learned counsel for the petitioner submits that one of the victims is laid up and may not be able to come to the court to report composition. That fact can be reported to the learned Magistrate and the learned Magistrate must consider whether such composition can be accepted even without the presence of the victim if the requisite materials are placed before the learned Magistrate to induce the satisfaction required under law.

(R.BASANT, JUDGE)

rtr/-

(R.BASANT, JUDGE)

rtr/-